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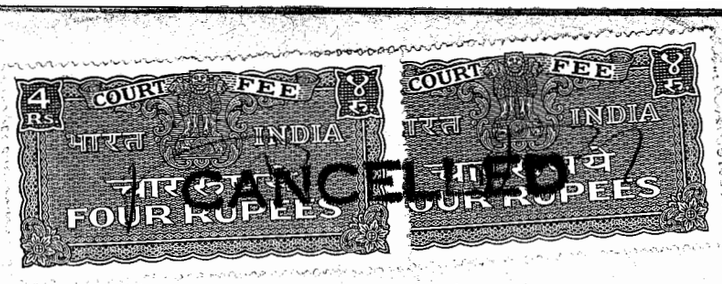

(2)

IN THE HIGH COURT OF MADHYAPRADESH AT JABALPUR.Y

CRIMINAL APPEAL No. 549 of 1995

APPELLANT(ACCUSED) RAVI SHANKER SINGH, aged 60 years, s/o Tatu Singh C houhan, Teacher resident of Jori, P.S.Bemetara, district Durg.

Vs

RESP ONDENT. The State of M.P. through the District Magis trate Durg.

APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 549/1995

Ravishanker singh

Vs.

State of Mahdya Pradesh (Now Chhattisgarh)

Single Bench: Hon'ble Justice Shri Dilip Raosaheb Deshmukh.

Shri P.S. Das, learned counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate/Addl. Public Prosecutor for the State.

JUDGMENT

(Delivered on 05-01-2006)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 10.2.1995 delivered by Shri T.K. Jha, VIth Addl. Sessions Judge, Durg in special case No. 243/1991 whereby the appellant was convicted under Section 354 of I.P.C. and was sentenced to rigorous imprisonment for two years and a fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for three months.

2. It is not disputed that the appellant was a teacher in village Jori on the date of occurrence. The appellant has, in his examination under Section 313 of the Cr.P.C., admitted that Genda Bai P.W. 6, a student of class-V used to visit his house for tuition and used to sleep at his house and return in the morning, next day. He has also admitted that that Genda Bai P.W. 6 did not appear in the examination in that year.

3. Briefly stated, the prosecution story is that the appellant used to call girls studying in Vth standard for tuition at his

house. The girls after attending the tuition used to sleep at his house and return the next day. On 9.4.1991, Genda Bai, P.W. 6 had gone to the house of the appellant for tuition. The appellant was not present at the house, so she slept with the other girls in the house of the appellant. Sometimes at night, the appellant woke Genda Bai P.W. 6 and tried to outrage her modesty by asking her to remove her underwear. There was a scuffle in which her underwear was torn. The appellant did nothing thereafter. Genda Bai P.W. 6 slept at the house of the appellant and returned home next day.

4. Jaguram P.W. 2, father of the prosecutrix lodged a written complaint on 5.5.1991 Ex.P-1 in P.S. Bemetara, Distt. Durg. After investigation, the appellant was prosecuted for an offence under Section 376 (2) (b) read with Section-511 of I.P.C. The trial Judge after considering the evidence led by the prosecution held that offence only under Section 354 I.P.C. was proved against the appellant and convicted him thereunder and sentenced the appellant as aforesaid.

5. Learned Counsel for the appellant made a two fold argument. Firstly, he contended that the evidence led by the prosecution fell short of the requisite proof required for convicting the appellant under Section 354 of I.P.C. In the alternative, he contended that on the date of occurrence, the appellant was an old man of 60 years and during the last 14 1/2 years, the appellant had already suffered a lot and therefore, the sentence awarded to the appellant should be adequately reduced. On the other hand, Shri Ashish Shukla, learned counsel for the State supported the impugned judgment.

6. Having heard the rival contentions and perusing the record of Sessions Case Trial No. 243/1991, I find that the testimony of the prosecutrix Genda Bai inspires evidence

and is wholly unrebutted in cross-examination. Surprising though, all the facts constituting the offence under Section 354 have emerged in cross-examination on leading questions being asked. It is true that Gangotri Bai P.W. 7 has not supported the prosecution story but this witness was not present in the house of the appellant at the time of the occurrence. The testimony of Genda Bai P.W. 6 clearly shows that late at night, the appellant caught hold of her hand and dragged her to his room and asker her to remove her underwear. The appellant also pulled her underwear which got torn. These facts clearly show that the appellant outraged the modesty of Genda Bai P.W. 6. The trial Judge has rightly relied on the evidence of Genda Bai P.W. 6 and the conviction of the appellant under Section 354 I.P.C. is well-founded. So far as the second limb of the argument advanced by the learned counsel for the appellant is concerned, it has some substance. On the date of occurrence i.e. on 9.4.1991, the appellant was aged 60 years. In the last more than 14 1/2 years, the appellant has certainly suffered mental agony and repentance. In my considered opinion, therefore, award of sentence of simple imprisonment for 3 months and a fine of Rs. 1,000/- would meet the ends of justice.

7. In the result, the appeal is partly allowed. The conviction of the appellant under Section 354 I.P.C. is maintained. However, the sentence of imprisonment awarded is reduced to simple imprisonment for three months. The amount of fine awarded is maintained. The appellant shall now surrender before the Chief Judicial Magistrate, Distt. Durg for undergoing sentence.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Priya